conditions of the statute, which requires a written incumbrance and a record of it, the vendor of the property parts with the possession at his peril; and if an equity in the property by purchase concurring with the possession, is found with a vendor who sells in a public market to a *bona fide* purchaser, the sale carries title with it."

B. E. BLACK.

San Francisco, Cal.

Supreme Court of Indiana.

HOCKETT *v.* STATE.

The fact that an article is manufactured under a patent granted by the United States, does not prevent a state, in the exercise of its police powers, from regulating its use.

A telephone company is a common carrier, in the same sense as a telegraph company. Its instruments and appliances are devoted to public use, and are subject to legislative control; so that the legislature of a state may prescribe the maximum charges for instruments and service.

Such regulation of property devoted to public use is not the taking of private property for public use, nor is it in any way an interference with the constitutional rights of a citizen in private property.

The word "telephone," as used in the act of April 13th 1885, designates and refers to an entire system, or apparatus composed of all the usual and necessary instruments for the transmission and reception of telephonic messages, and not to a single instrument.

Where a word has become a "term of art," evidence is admissible to explain its proper meaning.

Where a legislature has power and authority to enact a law, the courts cannot sit in judgment on its justice or expediency.

APPEAL from Marion Criminal Court.

McDonald, Butler & Mason, Baker, Hord & Hendricks, and *Williams & Thompson*, for appellant.

Harris & Calkins, and *Byfield & Howard*, for appellee.

The opinion of the court was delivered by

NIBLACK, C. J.—On the thirteenth day of April 1885, the legislature of this state passed an act entitled "An act to regulate the rental allowed for the use of telephones, and fixing a penalty for its violation;" the tenor of which is as follows:

"Section 1. Be it enacted by the General Assembly of the state of Indiana, that no individual, company, or corporation, now or hereafter owning, controlling or operating any telephone line, in operation in this state, shall be allowed to charge, collect, or receive as

rental for the use of such telephone a sum exceeding three dollars per month, where one telephone only is rented by one individual, company, or corporation. Where two or more telephones are rented by the same individual, company, or corporation, the rental per month for each telephone so rented shall not exceed two dollars and fifty cents per month.

"Sect. 2. Where any two cities or villages are connected by wire operated or owned by any individual, company, or corporation, the price for the use of any telephone, for the purpose of conversation between such cities or villages, shall not exceed fifteen cents for the first five minutes; and for each additional five minutes no sum exceeding five cents shall be charged, collected or received.

"Sect. 3. Any owner, operator, agent or other person who shall charge, collect, or receive for the use of any telephone any sum in excess of the rates fixed by this act, shall be deemed guilty of a public offence, and on conviction shall be fined in any sum not exceeding twenty-five dollars."

On the twenty-seventh day of July 1885, Theodore P. Haughey requested the Central Union Telephone Company, a corporation organized under the laws of the state of Illinois, but owning and operating a telephone exchange and system of telephone lines at the city of Indianapolis, in this state, to rent him one telephone, to be used at his residence upon his farm, four and one-half miles from the company's telephone exchange, and two miles outside of the corporate limits of the city of Indianapolis, and to connect such telephone with the exchange by the erection of the necessary poles and wires. In response to this request, the company offered to rent to Haughey a hand telephone and magneto-bell, and to connect them with its exchange, and to furnish exchange service from 7 o'clock A. M. until 6 o'clock P. M. each day, for three dollars per month, the company to have the right to place other subscribers upon the same line. But Haughey declined to accept that offer, and instead entered into a contract with the company for the use of "one battery transmitter and one magneto-telephone," and "the necessary appliances for connecting them with the exchange," upon certain terms and conditions named in the contract, for which he agreed to pay the company the sum of $33.50 for each quarter, or $11.16⅔ per month. The contract says:

"The above total sum is based upon the charges itemized as follows: Rental of one magneto-telephone and one battery transmitter

(two telephones) at the rate of $20 per annum; labor and service, charges for switching, construction and maintenance, charges for lines, batteries, central office apparatus, magneto-bell, and other appurtenances, at the rate of $114 per annum."

The telephone company built the line, and furnished the equipments for the use of Haughey, called for by its contract with him. At the expiration of the first three months after the contract went into effect, the appellant, John E. Hockett, acting as the district superintendent and general agent of the company at Indianapolis, demanded of and received from Haughey the sum of $33.50, claimed to be due, under the contract, for the latter's use of the line, and equipments therein provided for during the preceding three months. An information was thereupon filed against Hockett, charging him with a violation of the provisions of the act of the legislature hereinbefore set out, and upon proof of the matters above stated, with others of a formal, incidental, or a merely collateral character, the court below found him guilty of having charged more for the use of the telephone than the law permitted him, as well as the company he represented, to do, and, after overruling a motion for a new trial adjudged that he pay a fine as a penalty for the commission of a criminal offence.

It was shown at the trial that the articles furnished to Haughey as a telephone equipment, as well as all the other mechanical contrivances used by the company in the transmission of words and sounds over its wires, are patented articles, and that the company holds the right to use these patented articles by assignment, either direct or remote, from the patentees. It is first and most earnestly contended that, as the articles used by the company as above are under the constitution and laws of the United States, the legislature of a state has no power to limit the price, use, sale, or rental value of such articles, and that as a consequence, all acts of a state legislature of the class to which the one before us belongs are inoperative and ineffectual for any practical purpose.

Conceding the force as well as the plausibility of many of the arguments and illustrations used by counsel, the ready and indeed inevitable answer is that the question thus presented ought no longer be regarded as an open question. There is a reserved and at the same time well recognised power, affecting their domestic concerns remaining in all the states, which the government of the United States cannot and has seldom attempted to invade. This power is

so varied and comprehensive that an exact definition, as applicable to all its phases, has so far been found to be impracticable, but the instance in which the existence of such a power has been judicially recognised in particular cases are quite numerous, as well as various in their application to our complex system of government. This reserved power is usually, though perhaps not always accurately, denominated the police power of a state, and embraces the entire system of internal state regulation, having in view, not only the preservation of public order, and the prevention of offences against the state, but also the promotion of such intercourse between the inhabitants of the state as is calculated to prevent a conflict of rights and to promote the interests of all. Cooley, Const. Lim. § 572. It is a power inherent in every sovereignty, and is, in its broadest sense, nothing more than the power of a state to govern men and things within the limits of its own dominion: *License Cases*, 5 How. 582. It extends to the protection of the lives, limbs, health, comfort, and convenience, as well as the property, of all persons within the state. It authorizes the legislature to prescribe the mode and manner in which every one may so use his own as not to injure others, and to do whatever is necessary to promote the public welfare not inconsistent with its own organic law: *Thorp* v. *Rutland & B. Rd.*, 27 Vt. 149.

In 1867, letters patent were issued to one De Witt for a discovery in the manufacture of a quality of oil known as "Aurora Oil," and one Patterson became the assignee of the right conferred upon De Witt by his letters patent. Under a system of inspection provided by the laws of Kentucky, some casks containing this Aurora oil were branded, "Unsafe for illuminating purposes," and, notwithstanding a statute of that state making it a penal offence to sell oil thus branded, Patterson sold the casks of oil in question to one Davis. Patterson was thereupon indicted, tried and convicted in one of the Kentucky courts for the alleged unlawful sale of these condemned casks of oil. This judgment convicting Patterson of a criminal offence having been affirmed by the Court of Appeals of that state, the cause was taken to the Supreme Court of the United States to test the validity of the statute under which Patterson was so convicted, as a restraint upon the sale of a commodity covered by letters patent from the United States. Upon a review of all the questions involved, the validity of the statute was maintained, and the judgment of the Court of Appeals was in all things affirmed:

See *Patterson* v. *Kentucky*, 97 U. S. 501. The court held in that case, and as we have no doubt correctly, that all that the letters patent secured was the exclusive right in the discovery, and that the right thus secured was an incorporeal right, and hence without "tangible substance;" that the right to sell the oil was not derived from the letters patent, but existed and could have been exercised before the issuing of such letters, unless prohibited by some local statute; that because the patentee acquired a monopoly in his discovery, and was hence secure against interference, it did not follow that the tangible property, which came into existence by the application of the discovery, was beyond the control of the state legislation; that, on the contrary, the right of property in the physical substance, which is the fruit of the discovery, is altogether distinct from the discovery itself, just as the property in the instruments or plate by which copies of a map are multiplied is distinct from the copyright itself; that hence the right conferred upon the patentee, and his assigns, to make, use, and vend the corporeal article or commodity, brought into existence by the application of the patented discovery, must be exercised in subordination to the police or local regulations established by the state. The doctrine of that case was approved and followed in the more recent case of *Webber* v. *Virginia*, 103 U. S. 344, and has the support, either in direct terms or in principle, of numerous other carefully considered cases: *Patterson* v. *Com.*, 11 Bush 311; *State* v. *Telephone Co.*, 36 Ohio St. 298; s. c. 38 Am. Rep. 586, and note; *Jordan* v. *Dayton*, 4 Ohio 295; *Fry* v. *State*, 63 Ind. 552; *People* v. *Russell*, 49 Mich. 617; *Thompson* v. *Staats*, 15 Wend. 395; *Martinetti* v. *Maguire*, 1 Deady 216; *Vannini* v. *Paine*, 1 Harr. 65; *License Tax Cases*, 5 Wall. 462; *U. S.* v. *Dewitt*, 9 Id. 41; *Railroad Co.* v. *Husen*, 95 U. S. 465; *Beer Co.* v. *Massachusetts*, 97 Id. 25; *Brechbill* v. *Randall*, 102 Ind. 528; s. c. 1 N. E. Rep. 362; *Palmer* v. *State*, 39 Ohio St. 236; *Western Union Telegraph Co.* v. *Pendleton*, 95 Ind. 12.

While, therefore it is true that letters patent confer upon the patentee a monopoly to the extent of vesting in him, his heirs and assigns, the exclusive right to make, use, and vend the tangible property brought into existence by a practical application of the discovery covered by the letters patent for a limited time, it is not true that such exclusive right authorizes the making, using or vending such tangible property in a manner which would be unlawful

except for such letters patent, and independently of state legislation and state control.

It is next contended that the Central Union Telephone Company was organized, and has so far been conducted, as an ordinary business investment, and is in its methods, as well as in its relations to its patrons and subscribers, a merely private enterprise, no more subject to legislative control than any other private business with which a considerable number of persons have become either directly or indirectly connected; that consequently the act of the legislature under which this prosecution was instituted, is inoperative and void as a restraint upon the company in its charges for the rental and use of its instruments. The telephone is one of the remarkable productions of the present century, and although its discovery is of recent date, it has been in use long enough to have attained well-defined relations to the general public. It has become as much a matter of public convenience and of public necessity as were the stage-coach and sailing vessel a hundred years ago, or as the steamboat, the railroad, and the telegraph have become in later years. It has already become an important instrument of commerce. No other known device can supply the extraordinary facilities which it affords. It may therefore be regarded, when relatively considered, as an indispensable instrument of commerce. The relations which it has assumed towards the public make it a common carrier of news—a common carrier in the sense in which the telegraph is a common carrier—and impose upon it certain well-defined obligations of a public character. All the instruments and appliances used by a telephone company in the prosecution of its business are consequently, in legal contemplation, devoted to a public use: *State* v. *Nebraska Telep. Co.*, 17 Neb. 126; 24 Am. L. Reg. (N. S.) 262; *State of Missouri* v. *Bell Telep. Co.*, 23 Fed. Rep. 539; *State* v. *Telep. Co.*, 36 Ohio St. 296; *American R. Tel. Co.* v. *Connecticut Telep. Co.*, 44 Am. Rep. 237, and note.

It is now a well settled legal proposition that property thus devoted to a public use becomes a legitimate subject of legislative regulation and control. In recognition of that doctrine the case of *Munn* v. *Illinois*, 94 U. S. 113, has become a leading case. It was in general terms, held in that case, that when the owner of property devotes it to a use in which the public has an interest, he, in effect, grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public, for the com-

mon good, as long as he maintains the use to which he has so devoted his property, and that he can only escape such public control by withdrawing his grant and discontinuing the use. In support of that conclusion the court said it has been customary in England from time immemorial, and this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, and the like, and in so doing, to fix a maximum of charges to be made for services rendered, accommodations extended and articles sold. This case has been the subject of much unfriendly comment, and has encountered some very sharp criticism, but its authority as a precedent remains unshaken. This state regulation and control of property devoted to a public use is not the taking of property for a public purpose, within the meaning of section 66 of article 1, of the constitution of this state; nor is such regulation and control an interference with the guarantied rights of the citizen in private property. As bearing generally upon the subjects last above referred to, see also, the cases of *Chicago, B. & Q. Rd.* v. *Iowa*, 94 U. S. 155; *Chicago, M. & St. P. Rd.* v. *Ackley*, Id. 179; *Winona & St. P. Rd.* v. *Blake*, Id. 180; *Railroad Co.* v. *Richmond*, 96 Id. 521; *Railroad Co.* v. *Fuller*, 17 Wall. 560; *Olcott* v. *Supervisors*, 16 Id. 678; *Ruggles* v. *Illinois*, 108 U. S. 526; *Spring Valley Waterworks* v. *Schottler*, 110 U. S. 347; *Ruggles* v. *People*, 91 Ill. 256; *Illinois Cent. Rd.* v. *People*, 108 U. S. 541; *Allnut* v. *Inglis*, 12 East 527; *Mobile* v. *Yuille*, 3 Ala. (N. S.) 137; *N. J. Nav. Co.* v. *Merchants' Bank*, 6 How. 344; *Bolt* v. *Stennett*, 8 Term R. 606; *Com.* v. *Duane*, 98 Mass. 1; *Com.* v. *Tewksbury*, 11 Metc. 55; *Com.* v. *Alger*, 7 Cush. 53; *Metropolitan Board* v. *Barrie*, 34 N. Y. 657; *Slaughter-house Cases*, 16 Wall. 36; *Sharpless* v. *Mayor*, 21 Penn. St. 147; *Grant* v. *Courter*, 24 Barb. 232; *Bartemeyer* v. *Iowa*, 18 Wall. 129; *Beer Co.* v. *Massachusetts*, 97 U. S. 25; *Ogden* v. *Saunders*, 12 Wheat. 213; *Standard Oil Co.* v. *Combs*, 96 Ind. 179; *W. U. Tel. Co.* v. *Pendleton*, 95 Id. 12; *Indianapolis Rd.* v. *Kercheval*, 16 Id. 84; *Foster* v. *Kansas*, 112 U. S. 201; *Brechbill* v. *Randall*, 102 Ind. 528; *Fry* v. *State*, 63 Ind. 552; *Toledo Agricultural Works* v. *Work*, 70 Id. 253; *West Virginia Co.* v. *Oil Co.*, 5 W. Va. 382; *State* v. *Perry*, 5 Jones 252; *Att.-Gen.* v. *Railroad*, 35 Wis. 425.

The obvious deduction from what has been said, as well as from the authorities cited, is that the power of a state legislature to pre-

scribe the maximum charges which a telephone company may make for services rendered, facilities afforded, or articles of property furnished for use in its business, is plenary and complete.

It was made to appear by the evidence that there are several instruments more or less in use by telephone companies, each known as a "telephone;" one as the "Hand Telephone," another as the "Box Telephone," a third as the "Switchman's Head Telephone," and the fourth as the "Battery Transmitting Telephone;" that the first, known also as the "Bell Hand or Magneto Telephone," consists of a bar magnet; with a helix of wire at one end, and a diaphragm suitably mounted, in front of the helix, and a hard rubber case supporting the whole, with combined poles for making connection, with a cord from 24 to 30 inches long, and through it with a magneto-bell; that this telephone will both transmit and receive sounds or words carried electrically over a connecting wire; that this instrument was at first, with the assistance only of the magneto or call bell used in transmitting, as well as in receiving telephonic messages; that some time after this Bell hand telephone had thus come into use, the battery transmitting telephone, known as the "Blake Transmitter," was introduced and generally accepted as a very decided improvement in the transmission of words and sounds over wires used by telephone companies, words and sounds being transmitted through it in a louder tone, and with greater effect than through the Bell hand telephone; that for some time previous to the thirteenth day of April 1885, this Blake transmitter had come into general use in the transmission of messages with that class of patrons and subscribers who desired the best available telephonic service; that since the Blake transmitter had come into general use as stated, the Bell hand telephone had been chiefly used as a receiver of messages—only a comparatively few persons continuing to use it also for transmitting purposes; that on the day last named and for a considerable time previously, a fully equipped organization for the convenient and ready transmission and reception of messages over telephonic wires consisted, as it still consists, of a Bell hand telephone and cord, a Blake transmitter. a magneto or call bell, a cell of battery, a back-board, and a battery box; that the instruments thus constituting a telephonic equipment have been, and still are, only rented by telephone companies to their patrons and subscribers, the latter not being allowed to either purchase or to own any of such instruments.

Upon the facts thus disclosed by the evidence, it is, in the third place contended that the act of April 13th 1885, under consideration, only limits the price to be charged to three dollars per month, when one instrument known as a telephone is rented to a patron or subscriber, and does not apply to a case, like the one before us, where two instruments, each answering to that name, are, for his greater convenience, rented to the same person to be used together, and that consequently the facts of this case do not bring it within the penal provisions of that act. In a general sense, the name "telephone" applies to any instrument or apparatus which transmits sound beyond the limits of ordinary audibility. The speaking tube used in conveying the sound of the voice from one room to another in large buildings, or a stretched cord or wire attached to vibrating membranes or disks by which the voice is carried to a distant point, is, strictly speaking, a telephone. But since the recent discoveries in telephony the name is technically and primarily restricted to an instrument or device which transmits sound by means of electricity and wires similar to telegraphic wires. In a secondary sense, however, being the sense in which it is most commonly understood, the word "telephone" constitutes a generic term, having reference generally to the art of telephony as an institution, but more particularly to the apparatus, as an entirety, ordinarily used in the transmission as well as in the reception of telephonic messages. In this latter sense the Central Union Telephone Company, in behalf of which the appellant stands as the representative in this proceeding, has very significantly sanctioned the use of the word "telephone." In August, 1885, it published a book for the use of its patrons and subscribers, entitled "Indianapolis Telephone Directory," in which those having the use of its telephonic instruments were instructed as follows:

"Call by number. When through talking, ring out. Make all complaints to the chief operator, call No. 1000. Help each other by answering your telephone promptly. Do not allow non-subscribers to use your telephone; it is unjust to other subscribers, impedes the service, and is a violation of your contract."

These were a substantial repetition of instructions issued by the Western Telephone Company, one of the predecessors of the Central Union Telephone Company, in June 1883. In these instructions the "telephone" is plainly referred to as an organized apparatus,—an institution,—and not as a single instrument. In

this use of the word "telephone" the telephone companies in question, simply adopted and emphasized what had already been generally accepted as the proper meaning of that word, in the connection in which it was so used by them.

Before the great discovery of Prof. Morse in telegraphy, the power of electricity to give a sudden and mysterious impulse to a suspended wire, was well understood among those most familiar with experiments in electrical science. His discovery consisted in the invention of an instrument or machine which utilized that power of electricity, and thereby enabled him to send intelligible messages over suspended wires, to remotely distant places. When that instrument or machine first came into use, the word "telegraph" was understood to more particularly refer to it, as the thing best known by that name; but since that time a much wider and more comprehensive meaning has been attached to that word. The "telegraph" is now usually accepted, and in common parlance is generally understood, as referring to the entire system of appliances used in the transmission of telegraphic messages, by electricity, consisting of—First, a battery, or other source of electric power; secondly, of a line, wire, or conductor for conveying the electric current from one station to another; thirdly, of the apparatus for transmitting, interrupting, and, if necessary, reversing the electric current at pleasure; and fourthly, of the indicator or signaling instrument. See Imperial Dict., title "*Telegraph.*"

In the respect indicated, the varying meanings of the word "telephone" are analogous to those applied to the word "telegraph;" there being very much in common between the two systems of telephony and telegraphy. In reaching a conclusion as to what is generally understood by the use of the word "telephone," we have been governed partly by the information judicially within our reach, and in other respects by the evidence. The word having become a term of art, evidence was admissible to explain its proper meaning; Greenl. Ev. sect. 280; Whart. Ev. sects. 961–972. In view of the condition of things as shown to have existed on the thirteenth day of April 1885, we feel constrained to hold that the word "telephone," as used in the act of that date, was intended to designate, and in fact really referred to an apparatus composed of all the usual and necessary instruments for the convenient and ready transmission and reception of telephonic messages, and not to a single instrument only.

There was evidence at the trial tending to prove that the Central Union Telephone Company cannot supply the facilities to Haughey provided for in its contract with him, for three dollars per month, without actual and very serious loss; and, arguing that the legislature cannot be presumed to have intended to inflict injustice upon any person or corporation, it is insisted we ought to take the company's liability to sustain a great loss, in a certain contingency, into consideration, in determining the legislative intention in enacting the statute in question in this case. This argument is largely based upon the assumption that the company was not at liberty to decline to extend its line to Haughey's farm, upon his request that such an extension should be made, and that it will be compelled to maintain such extension so long as Haughey may require it to be maintained, independently of any contract with him on the subject. This assumption is, however, not well founded. There is nothing in the act of the legislature under review, or contained in any other statutory or common-law regulation applicable to the subject to which our attention has been called, which requires a telephone company to construct a new line against its will, or to maintain an old line longer than it may feel inclined to do so, in the exercise of a legitimate business discretion. Besides, the power of the legislature to pass the act in question being conceded, this court cannot sit in judgment upon either the justice or the expediency of the enactment of such a law. If the law shall prove to be either unjust or inexpedient in its operation, whether upon persons or corporations, the appeal must be to the legislature, and not to the courts; 20 Cent. L. J. 83.

The judgment is affirmed, with costs.

Telephone cases are not numerous. The first we shall notice are those touching the companies' right to use the public highways for the stretching of their wires. In this respect telephone companies do not differ from telegraph companies, and may be subjected to the restrictions and rules that the latter are. It has been held that telegraph poles in a city should be shapely and not unsightly: *Forsythe* v. *B. & O. Telegraph Co.*, 12 Mo. App. 494. If erected under a statute, the city, perhaps, cannot thus regulate them: *Gay* v. *Mutual Union Telegraph Co.*, Id. 485. If a wire of a telegraph company so sway as to interfere with public travel, and one is injured without fault on his part, he may recover damages from the owners of the wire: *Dickey* v. *Maine Telegraph Co.*, 46 Me. 483; see *Young* v. *Yarmouth*, 9 Gray 386.

The authority given by legislatures to telegraph companies to erect poles in public streets is subject to the liability to make compensation to the adjacent land-owner for the use: *Board of Trade Telegraph Co.* v. *Barnett*, 107 Ill. 507; the company sought to erect poles on the highway running through the plaintiff's land;

and it was held to be an additional burden to the easement. Yet in Massachusetts exactly the opposite was held: *Pierce* v. *Drew*, 136 Mass. 75; although three out of seven judges dissented, and delivered an able opinion in opposition to the position taken by the majority. Following the Illinois case are the cases of *Dusenbury* v. *Mutual Telegraph Co.*, 11 Abb. N. C. 440; *Atlantic & Pacific Telegraph Co.* v. *Chicago, Rock Island & Pacific Rd. Co.*, 6 Biss. 158; *Southwestern Rd. Co.* v. *Southern & Atlantic Telegraph Co.*, 46 Geo. 43. Where the fee in street is in the public: *contra*, *Metropolitan Telegraph Co.*, 67 How. Pr. 365; *People* v. *Metropolitan Telephone & Telegraph Co.*, 31 Hun 596.

A case of some interest arose in England. The Court of Appeals in this case decided that the municipal corporation (in the particular case a local board of works), in which was vested the public street, for the purposes of keeping it open, improved and repaired as a public street, did not own the space above the street *usque ad cœlum*. The question was whether a statute (18 & 19 Vict. ch. 120, sec. 96), gave the board of works for a particular district of the metropolis a right to an injunction to prevent a telephone company from carrying their wires diagonally across the street at the level of the chimneys, the owner of the houses not objecting, and they not being a nuisance, nor creating appreciable dangers. The injunction was granted; but on appeal, the decision was reversed, because the board had not such an interest as entitled them to maintain the action, unless the act created a nuisance or rendered the street dangerous to the public; applying the principle of *Coverdale* v. *Charlton*, 48 L. J. Rep. 128. See *Board of Works* v. *United Telephone Co., Limited*, 51 L. T. Rep. (N. S.) 148. In Louisiana it was decided that an adjoining landowner cannot have poles removed on the ground that they are a nuisance: *Irwin* v. *Great Southern Tel. Co.*, 20 Reporter 174.

A case of considerable importance arose in Nebraska. In that case it was decided, that a telephone company, undertaking to supply a public demand, must serve all alike, without discrimination; that it is a common carrier of news, and all persons are entitled to equal facilities in the enjoyment of the benefits to be derived from its use; and if no good reason is assigned for a refusal by a company to furnish a telephone to a person desiring its use or a subscriber, a writ of mandamus will issue to compel the company to furnish such person with the necessary instruments, on a tender of a full compliance with all reasonable rules established for subscribers: *State* v. *Nebraska Telephone Co.*, 17 Neb. 126; 24 Am. L. Reg. 262.

So in Missouri, where a telegraph company applied to a telephone company for service and was refused, a writ of mandamus was issued to compel the granting of service: *American Union Telegraph Co.* v. *Bell Telephone Co.*, abstracted in 10 Cent. L. J. 438; and in 11 Cent. L. J. 359; 38 Am. Rep. 587; 44 Id. 241.

In Kentucky, the plaintiffs were the proprietors of public carriages, and the defendants were a telephone company that was also the proprietors of public carriages. The defendants were restrained by the Louisville Chancery Court from removing their telephone from the plaintiffs' office, and from refusing to transact the plaintiffs' telephone business, pursuant to a contract between the parties. *Louisville Transfer Co.* v. *Amer. Dist. Telephone Co.*, 24 Alb. L. J. 283; abstracted in 38 Am. Rep. 588; 44 Id. 242.

In the Circuit Court for the Eastern District of Missouri arose the case of *The State of Missouri ex rel. Baltimore & Ohio Telegraph Co.* v. *Bell Telephone*, 24 Am. L. Reg. 573. The point decided was this: A., a Massachusetts corporation, and the owner of a patent on a telephone, licensed B., a

Missouri corporation, to do the telephone business of St. Louis, upon condition that B. should not establish telephonic connection with any telegraph company unless specially authorized by A. A. permitted B. to establish telephonic connection with the Western Union Telegraph Co. Afterwards, the Baltimore & Ohio Telegraph Co. applied for a mandamus to compel B. to perform telephonic communication between it and the petitioners. A. was not made a party. It was held that A. was not a necessary party; that all other telegraph companies were entitled to the same privilege granted to the Western Union Telegraph Co., upon paying the same price; and that the petitioner was entitled to the relief asked. The chief point made was that it could not discriminate between patrons.

In Ohio a statute provided that telegraph companies should receive dispatches from and for other telegraph lines, and from and for individuals, and transmit them with impartiality and good faith. A contract between a telephone company and the owner of a telephone instrument, providing that the company in the use of the instruments should discriminate as between telegraph companies, was held void as against public policy. It was further held that, although the telephone was a patented article, it was devoted to public use, and was subject to control by state legislation where the public welfare demanded it: *State* v. *Telephone Company*, 36 Ohio 296; see *Public Grain & Stock Exchange* v. *Western Union Telegraph Co.*, 16 Fed. Rep. 289—a telegraph case.

A case somewhat similar was before the Supreme Court of Connecticut. The defendant was a Connecticut telephone company, and had purchased from a Massachusetts telephone company owning the patent, the right to use its magnetic telephone system, for a certain period, on the condition that it should not permit telegraph companies to use the system, unless they had purchased the right from the Massachusetts company. A statute of Connecticut provided that every telephone company should impartially permit persons and corporations to transmit speech through its wires by its instruments. The plaintiffs, a telegraph company in Connecticut, not having purchased the right, sued to compel the defendants to permit it to use the system. The action was held not maintainable: *American Rapid Telegraph Co.* v. *Connecticut Telephone Co.*, 49 Conn. 352.

For a case involving the rights of the Bell patent and the Drawbaugh patent, see 25 Fed. Rep. 725.

A second case came before the Supreme Court of Indiana, and was decided the same as the principal one: *Hackett* v. *State*, 5 N. E. Rep. 202.

On March 23d 1886, the same court decided that the telephone company could be compelled to furnish service to subscribers, by use of the writ of mandamus: *Telephone Company* v. *State*, 5 N. E. Rep. 721.

The subtile distinction sought to be drawn in this case is certainly unwarranted; and has been fairly met by the court. By the use of such distinctions, any telegraph company, or any railroad company could escape the regulations sought to be placed upon it. To allow them would not only have defeated the object of the legislature in passing the act drawn in question, but have rendered it practically, if not wholly impossible to pass an act which would cover every phase of the evil sought to be corrected by its passage. So long as it had decided to give expression to the legislative will, the court could not have decided, in this respect, any other way.

W. W. THORNTON.

Crawfordsville, Ind.